

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today  
(1) was not written for publication in a law journal and  
(2) is not binding precedent of the Board.

Paper No. 17

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte ROBERT L. BULLOCK  
and BRUCE M. BULLOCK

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Appeal No. 96-1358  
Application 08/192,055<sup>1</sup>

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ON BRIEF

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Before CALVERT, COHEN, and ABRAMS, *Administrative Patent Judges*.  
ABRAMS, *Administrative Patent Judge*.

**DECISION ON APPEAL**

This is an appeal from the decision of the examiner finally rejecting claims 1-14, which constitute all of the claims of record in the application. However, the examiner indicated in the Answer that the subject matter recited in dependent claim 13

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<sup>1</sup> Application for patent filed February 4, 1994.

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defines over the prior art of record, and that this claim would be allowable if rewritten in independent form. Therefore, claims 1-12 and 14 remain before us on appeal.

The appellants' invention is directed to a rail car bridge plate. The subject matter before us on appeal is illustrated by reference to claim 1, which has been reproduced in an appendix to the Appeal Brief.

#### **THE REFERENCES**

The references relied upon by the examiner to support the final rejection are:

Doyle	5,004,287	Apr. 2, 1991
Michelin (German)	806,856 <sup>2</sup>	Jun. 18, 1951

#### **THE REJECTIONS**

Claim 1 stands rejected under 35 U.S.C. § 102(b) as being anticipated by the German reference.

Claims 2-5, 8-12 and 14 stand rejected under 35 U.S.C. § 103 as being unpatentable over the German reference.

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<sup>2</sup> Our understanding of this reference is based on an English translation thereof prepared for the United States Patent and Trademark Office. A copy of said translation is attached hereto.

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Claims 6 and 7 stand rejected under 35 U.S.C. § 103 as being unpatentable over the German reference in view of Doyle.

The rejections are explained in the Examiner's Answer.

The opposing viewpoints of the appellants are set forth in the Appeal Brief and the Reply Brief.

### **OPINION**

#### *The Rejection Under Section 102*

It is axiomatic that anticipation is established only when a single prior art reference discloses, either expressly or under the principles of inherency, each and every element of the claimed invention. See *In re Paulsen*, 30 F.3d 1475, 1480-1481, 31 USPQ2d 1671, 1675 (Fed. Cir. 1994) and *In re Spada*, 911 F.2d 705, 708, 15 USPQ2d 1655, 1657 (Fed. Cir. 1990).

Independent claim 1 is directed to a portable bridge plate assembly attachable and removable from facing ends of rail cars. Among the limitations recited in this claim is that there be a plate assembly including two relatively movable telescoping load bearing plate members, and that one end of each plate member have

means thereon for removably attaching the plate member to the end of a rail car in a manner to prevent movement other than pivotal movement about a horizontal axis (emphasis added).

As disclosed in the appellants' specification, the "means for attaching the plate member" comprises an end connector (36 and 46) which is fixedly joined to the ends of the plurality of telescoping tubes which constitute each plate member, with the end connector being attached by horizontally oriented pins (52) to the end of the rail car. As a result, movement of the plate member is restricted to pivoting upwardly and downwardly about the horizontally oriented pins.

The German reference discloses a connecting walkway between two train cars. The walkway comprises two opposed sets of interdigitating members removably attached at one of their ends to the end of a rail car, and in telescoping relationship with respect to one another. The means for removably attaching each set of members to the rail cars comprises a horizontally oriented rod (7) which permits pivotal movement about a horizontal axis (see Figure 4) and a plurality of vertically oriented pins (5) which permit pivotal movement about a vertical axis (see Figure 3). Thus, members are free to pivot about both horizontal and vertical axes, rather than being limited to the horizontal axis, as is required by claim 1. This being the case, the German reference fails to disclose the required structure, and is not anticipatory of the subject matter recited in the claim.

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The rejection of claim 1 is not sustained.

*The Rejections Under Section 103*

The test for obviousness is what the combined teachings of the prior art would have suggested to one of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981). In establishing a *prima facie* case of obviousness under 35 U.S.C. § 103, it is incumbent upon the examiner to provide a reason why one of ordinary skill in the art would have been led to modify a prior art reference or to combine reference teachings to arrive at the claimed invention. See *Ex parte Clapp*, 227 USPQ 972, 973 (BPAI 1985).

The first rejection under this section of the statute is that the subject matter of claims 2-5, 8-12 and 14 would have been obvious in view of the German reference. Claims 2-5, 7 and 8 depend from claim 1. In our discussion above with regard to the anticipation rejection, we concluded that the German reference failed to disclose means for attaching the plate member to the end of the rail car which are in accordance with the requirements of the claim. Considering the teachings of the German reference in the light of the guidance provided by our reviewing court regarding Section 103 does not alter the fact that this deficiency is present in the reference. One of

ordinary skill in the art would not have found suggestion in the German reference for attaching the plate members in the manner required by claim 1; to do so would be contrary to the stated objective of the German invention, which is to provide a connecting walkway "independent of the relative position of the two cars" (translation, page 2). As explained in the reference, this includes both the horizontal and vertical orientation.

The teachings of the German reference therefore fail to establish a *prima facie* case of obviousness with regard to the subject matter of claims 2-5 and 8, and we will not sustain this rejection.

Independent claim 9 recites a portable bridge plate assembly including a plate member formed of a plurality of spaced tubular members "rigidly joined together at opposite ends thereof by transverse support members." In the German reference, the members clearly are not rigidly joined together, as can be readily discerned by viewing Figures 1, 2 and 3. In fact, the system for joining the telescoping members in the reference is the antithesis of that claimed, in that it attaches the members together loosely by rods (14) which slide in openings in the

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members in order to allow them a great deal of movement with respect to one another so that the walkway can operate in the manner desired.

This being the case, the teachings of the German reference do not establish a *prima facie* case of obviousness with regard to the subject matter of claim 9, and we will not sustain the rejection of claim 9 or, it follows, of claims 10-12 and 14, which depend therefrom.

The last rejection offered by the examiner is that claims 6 and 7, which are in the chain of dependency from claim 1, are unpatentable in view of the combined teachings of the German reference and Doyle. The examiner cites Doyle for its teaching of utilizing a spring-biased latch in the attachment means of the German reference. Be that as it may, Doyle does not alleviate the shortcoming we pointed out in the German reference with regard to claim 1, and therefore these two references fail to render the subject matter of claims 6 and 7 *prima facie* obvious.

The rejection of claims 6 and 7 is not sustained.

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SUMMARY

The references applied by the examiner fail to establish that the subject matter recited in claim 1 is anticipated by the prior art, or that the subject matter of claims 2-12 and 14 is rendered obvious by the prior art. This being the case, we have not sustained any of the rejections.

The decision of the examiner is reversed.

REVERSED

Ian A. Calvert	)	
Administrative Patent Judge	)	
	)	
	)	
	)	
Irwin Charles Cohen	)	BOARD OF PATENT
Administrative Patent Judge	)	APPEALS AND
	)	INTERFERENCES
	)	
	)	
Neal E. Abrams	)	
Administrative Patent Judge	)	



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Kinzer, Plyer, Dorn,  
Mc Eachran & Jambor  
55 East Monroe St.  
Chicago, IL 60603